EXHIBIT 1

INTRODUCTION

Respondent Daniel Spence was employed by the Health and Human Services Agency Data Center ("Data Center") as a Software Specialist III from August 1999 until December, 14, 2001. Respondent first began working for the Data Center in 1985. The Data Center provided computer processing and telecommunication services to departments within the California Health and Human Services Agency.[1] Respondent Spence left state service on December 14, 2001.

In this matter, as a Data Center employee, Respondent Spence failed to disqualify himself from participating in making a governmental decision concerning Shooting Star Solutions, Inc., a company with whom he was negotiating prospective employment.

For the purposes of this stipulation, Respondent's violation of the Political Reform Act (the "Act")[2] is stated as follows:

COUNT 1: On or about and between November 21, 2001 and December 14, 2001, Respondent Daniel Spence, an employee with the Health & Human Services Agency Data Center, participated in making a governmental decision regarding a $345,600 contract between the Health & Human Services Agency Data Center and Shooting Star Solutions, Inc. at a time when he was negotiating, or had an arrangement concerning, prospective future employment with Shooting Star Solutions, Inc., in violation of section 87407 of the Government Code.

SUMMARY OF THE LAW

Section 81001, subdivision (b) states that public officials should perform their duties in an impartial manner, free from bias caused by their financial interests or the financial interests of persons who have supported them. In order to accomplish this purpose, section 87100 prohibits a public official from making, participating in making, or attempting to use his or her official position to influence any governmental decision in which the official knows or has reason to know that he or she has a financial interest.

Section 87407 provides that no public official shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

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[1] The Data Center later merged with the Teale Data Center and the Office of Network Services, and as is now known as the Department of Technology Services.

[2] The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

Section 82048 defines "public official" as every member, officer, employee or consultant of a state or local government agency. The Data Center is a state administrative agency, as defined in section 87400, subdivision (a), and as a Software Specialist III employed by the Data Center, Respondent Spence was an employee of a state agency subject to the prohibition in section 87407.

According to regulation 18747, subdivision (b), a governmental decision "directly relates" to a prospective employer when: 1) the prospective employer initiates a proceeding in which the decision will be made by filing an application, claim, appeal or similar request; 2) the prospective employer is a named party in, or is the subject of, a proceeding in which the decision will be made; 3) the proceeding involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the prospective employer; or 4) it is reasonably foreseeable that the governmental decision will have a material financial effect on the prospective employer.

For purposes of this restriction, a "prospective employer" is a person, including a business entity, with whom an official, either personally or through an agent, is negotiating with, or has an arrangement concerning, prospective employment. Under regulation 18747, subdivision (c), a public official is "negotiating' employment when he or she interviews or discusses an offer of employment with an employer or his or her agent, and a public official has an "arrangement" concerning prospective employment when he or she accepts an employer's offer of employment.

Regulation 18702.2, as it was in effect in 2001, provided that a public official "participates in making a governmental decision" when, acting within the authority of his or her position, the official advises or makes recommendations to the decision-maker either directly or without significant intervening substantive review, by preparing or presenting any report, analysis, or opinion, orally or in writing, which requires the exercise of judgment on the part of the official, and the purpose of which is to influence a governmental decision.

SUMMARY OF THE FACTS

Respondent Daniel Spence was employed by the Health and Human Services Agency Data Center ("Data Center") as a Software Specialist III from August 1999 until December, 14, 2001. Respondent Spence first began working for the Data Center in 1985, and held various positions prior to becoming a Software Specialist III. Respondent's duties as a Software Specialist III included negotiating and procuring software and hardware products for computers; renegotiating prices, terms, and conditions for existing software and hardware contracts; preparing the annual budget for acquisitions and monitoring actual expenditures against the budget; and managing the software portfolio to ensure that the Data Center and the vendors were in compliance with the terms of the contracts. Respondent was highly skilled and experienced at negotiating software contracts for the agency, and, in 2001, there was no other employee immediately available within the Data Center who was as qualified or capable of performing his job duties.

During the spring of 2001, Respondent approached his immediate supervisors at the Data Center, and inquired about a promotion or an increase in pay. After the supervisors told him that none would be forthcoming, they discussed the possibility of Respondent leaving state service and entering

the private sector where he could make more money. Respondent later met with Data Center Director Robert Dell'Agostino and informed him that he was thinking of leaving state service and entering the private sector.

Thereafter, during the spring and summer of 2001, Director Dell'Agostino and Data Center management staff developed a method to retain Respondent Spence's services with the agency, rather than have him leave and enter the private sector. Due to Respondent Spence's expertise and skill, and the millions of dollars he saved the state through his software negotiations with outside vendors, it was believed that retaining Respondent's services was vital to the agency's productivity. Legal counsel for the agency researched potential conflict of interest issues and advised Director Dell'Agostino in July 2001, regarding various conflict of interest statutes and concluding that Respondent would probably not have a conflict of interest. Thereafter, management staff decided to contract with an outside information technology company that would hire Respondent as a consultant to work directly for the Data Center.

COUNT 1

Failure to Disqualify Himself from Participating in Making a Governmental Decision Regarding a Prospective Employer

In preparation for and as part of the contract with an outside information technology company, the Data Center developed a statement of work for the software asset management-negotiator position, which included a written description of the tasks that the contractor would provide to satisfy the particular needs of the Data Center, the responsibilities for the contractor and the Data Center, the contract duration, the amount of the contract, payment methods, and other provisions. Respondent Spence reviewed and participated in the development of the statement of work, which named "Daniel Spence" as the consultant to be retained by the contractor, with a one year contract term, and a contract amount of $345,600.

In approximately October 2001, Mr. Spence approached John Eskel of Eskel Porter Consulting ("Eskel Porter") regarding Eskel Porter retaining Mr. Spence as a consultant under the statement of work that had been developed by the Data Center. In an interview with Supervising Investigator Dennis Pellón, Mr. Eskel stated that Respondent wanted to be paid as a "pass through" employee, meaning that all monies under the contract would go directly to the named consultant, and none would go to Eskel Porter. According to Mr. Eskel, Respondent explained that there would be the potential for future contract business. Mr. Eskel was concerned about potential conflict of interest issues by having Respondent work for both Eskel Porter and his former agency. Mr. Eskel stated that Respondent assured him the matter had been reviewed and there was no conflict of interest problem. When Eskel Porter management later informed Respondent that the "pass through" provision he had requested was unacceptable, Respondent terminated negotiations with Eskel Porter.[3] At the time, a statement of work had been prepared that listed Eskel Porter as the contractor, Daniel Spence as the consultant, a contract term of November 1, 2001 through October 30, 2002, and a contract amount of $345,600.

[3] In her interview with Investigator Pellón, the Data Center's Director of Administrative Services Debra Fraga-Decker stated that she had concerns about using Eskel Porter as a vendor under the contract with Respondent since they were not approved under their MSA (Multiple Service Award) contract to perform software negotiation work. When Respondent heard of her concerns, he approached her and tried to convince her that they should contract with Eskel Porter. Ms. Fraga-Decker told Respondent they would need a CMAS (California Multiple Award Schedule) vendor for the contract, and she gave Respondent the name of Shooting Star Solutions, LLC, and showed him how to search for other CMAS vendors.

In approximately November 2001, Respondent approached Barry Johnson of Shooting Star Solutions, LLC ("Shooting Star Solutions") about the same contract proposal. Mr. Johnson had discussions with Respondent regarding his employment as a consultant for Shooting Star Solutions. Mr. Johnson offered to pay Respondent $165 per hour, with Shooting Star Solutions retaining 8-9% as a standard fee for Shooting Star Solutions. They also discussed requirements Respondent would need to meet in order to be a consultant for Shooting Star Solutions, including Respondent providing his own liability insurance. The statement of work was revised to list Shooting Star Solutions as the possible vendor, with Respondent still listed as the consultant at a contract price of $345,600. The contract duration listed on the revised statement of work was from December 17, 2001 through December 31, 2002. At the time, Shooting Star Solutions, which was an information technology services provider, had an existing contract with the Data Center and maintained office space within the Data Center's offices.

On December 10, 2001, Barry Johnson submitted a letter to the Data Center with an attached copy of the above statement of work for the $345,600 contract to provide information technology services to the Data Center, listing Daniel Spence as the consultant to perform the services at a pay rate of $180 per hour. A departmental approval route slip signed by Director Dell'Agostino and other Data Center management staff on December 14, 2001 and December 17, 2001, effectively executed the agreement between the Data Center and Shooting Star Solutions.

On December 14, 2001, Daniel Spence submitted his resignation to the Data Center, and terminated his state service. On December 17, 2001, Mr. Johnson executed a contract with Daniel Spence, in the name of Spence Consulting Enterprise, LLC. The contract, entitled "Independent Sub-Contractor Agreement," was between Shooting Star Solutions, LLC (the "company") and Spence Consulting Enterprises, LLC (the "contractor".) According to the contract, Respondent Spence was to be paid $165 per hour on a time and materials basis, with 1920 hours allotted for the effort under the one-year contract with the Data Center. Respondent Spence signed the contract on December 19, 2001. Thereafter, Respondent returned to the Data Center, sat at his same desk, and performed the same duties as he had previously performed as a state employee. However, at that time and as a result of the contract, Respondent Spence was paid $165 per hour, over three times his previous state salary.

During the summer of 2002, poor morale and employee dissatisfaction with Respondent's consultant contract, prompted the newly appointed Data Center director to terminate the contract with Shooting Star Solutions. The contract effectively ended on October 15, 2002.

By participating in making a governmental decision on or about and between November 21, 2001 and December 14, 2001, regarding the contract between the Data Center and Shooting Star Solutions, a company with whom he was negotiating prospective employment, Respondent Spence violated section 87407.

CONCLUSION

This matter consists of one count of violating section 87407 of the Act, which carries a maximum administrative penalty of Five Thousand Dollars ($5,000).

In aggravation, the amount of the contract at issue was significant and more than tripled Respondent Spence's salary once he left state service. It appears that Respondent was successful in leveraging his expertise and skill as a software specialist with the Data Center to procure a lucrative employment opportunity for himself. Respondent was also instrumental in preparing the statement of work that was incorporated into the contract, and actively participated in the negotiation process with both Eskel Porter and Shooting Star Solutions.

In mitigation, Respondent has no prior history of violating the Political Reform Act. In addition, the Data Center has some complicity in this violation, since they desired to retain Respondent's services for the overall benefit of the agency. Legal counsel for the agency advised the Data Center director regarding conflict of interest issues, and generally concluded that there would probably not be a conflict with the contract arrangement between Respondent and a private vendor.

The facts of this case, including the foregoing aggravating and mitigating factors, justify imposition of the agreed upon penalty of Three Thousand Five Hundred Dollars ($3,500).